

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

5

6 97-111 HALE, LLC and 100-114

7 HALE, LLC,

8 Case No. 15-22381-rdd

9 Debtor.

10 - - - - - x

11 In the Matter of:

12

13 100-114 HALE, LLC,

14 Case No. 15-22382-rdd

15 Debtor.

16 - - - - - x

17 GRAND PACIFIC FINANCE CORP.,

18 Plaintiff,

19 v.

Adv. Case No. 15-08224-rdd

20 97-111 HALE, LLC, et al.,

21 Defendants.

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U.S. Bankruptcy Court
300 Quarropas Street
White Plains, New York

May 8, 2015

12:08 PM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

Hearing re: 15-22381 - Initial Case Conference

Hearing re: Motion for Sanctions Pursuant to 11 U.S.C. §
105(a), 28 U.S.C. § 1927, and/or Bankruptcy Rule 9011 filed
by Hanh V. Huynh on behalf of Grand Pacific Finance Corp.

Hearing re: Motion of Grant Pacific Finance Corp. for (I)
Dismissal of the Chapter 11 Cases, or (II) in the
Alternative, for Relief from the Automatic Stay filed by
Hanh V. Huynh on behalf of Grand Pacific Finance Corp.

Hearing re: Debtors' Omnibus Objection to the Motions of

Grand Pacific Finance Corp. for (I) Dismissal of the Chapter
11 Cases, or (II) in the Alternative, for Relief from the
Automatic Stay, and (III) For Sanctions Pursuant to 11
U.S.C. § 105(a), 28 U.S.C. §1927, and/or Bankruptcy Rule
9011 (related document(s)18, 17) filed by Julie Cvek Curley
on behalf of 100-114 Hale, LLC, 97-111 Hale, LLC

Hearing re: 15-22382 - Debtors' Omnibus Objection to the
Motions of Grand Pacific Finance Corp. for (I) Dismissal of
the Chapter 11 Cases, or (II) in the Alternative, for Relief
from the Automatic Stay, and (III) For Sanctions Pursuant to
11 U.S.C. § 105(a), 28 U.S.C. § 1927, and/or Bankruptcy Rule
9011 (related document(s)18, 17) filed by Julie Cvek Curley
on behalf of 100-114 Hale, LLC, 97-111 Hale, LLC

Hearing re: Adversary - 15-08224 - Status Conference

Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR, LLP

3 Attorneys for the Debtors

4 One North Lexington Avenue

5 White Plains, NY 10601

6

7 BY: JONATHAN S. PASTENAK, ESQ.

8 JULIE CVEK CURLEY, ESQ.

9

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11 Attorney for Grand Pacific Financing Corp.

12 2 Park Avenue

13 New York, NY 10016

14

15 BY: STEPHEN B. SELBST, ESQ.

16

17 ALSO PRESENT:

18 GREG ZIPES, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: All right. 97-111 Hale, LLC and
3 100-114 Hale LLC?

4 (Pause)

5 THE COURT: Okay. There are a lot of matters on
6 the calendar for this case, also it's initial case
7 conference, as well as a motion for stay relief or
8 dismissal, and a motion for sanctions.

9 So as far as the case conference I read the
10 pleadings on this obviously. It's a single asset real
11 estate case. As far as secured debt is concerned you have
12 the one secured creditor?

13 MR. PASTERNAK: Yes, I mean there are probably
14 some outstanding city wide plans real estate taxes which
15 would be --

16 THE COURT: But there's no cash, right, so there's
17 no cash collateral?

18 MR. PASTERNAK: That's correct. No, we're talking
19 about a hole in the ground --

20 THE COURT: Right.

21 MR. PASTERNAK: -- well not a hole in the ground,
22 a paved parcel.

23 THE COURT: A development property.

24 MR. PASTERNAK: Yes, Your Honor.

25 THE COURT: And operating reports are not due yet?

1 MR. PASTERNAK: That's correct. We've done our
2 341, we've done our initial debtor interview, and our first
3 report is not due yet, that's correct, Your Honor, but it's
4 not going to show any monetary activity at this point.

5 THE COURT: Right. Are you anticipating retaining
6 anyone besides your firm?

7 MR. PASTERNAK: The only one I would think of is,
8 as we will develop this case, is zoning counsel, Your Honor.
9 There was prepetition zoning counsel on this.

10 THE COURT: Okay.

11 MR. PASTERNAK: We possibly -- and architects so
12 that we could get the site development work that we've
13 eluded to back on track.

14 THE COURT: And maybe this is presaging the motion
15 to dismiss and/or lift the stay, but where's the money going
16 to come for that, the development work?

17 MR. PASTERNAK: Yeah, we've already approached
18 several lenders for both DIP financing and exit finishing.

19 THE COURT: All right.

20 MR. PASTERNAK: So the DIP element would be to
21 come in, we believe it's about \$300,000, to get all of the
22 preliminary approvals reinstated, and be in a position to
23 break ground with a full-blown construction loan. Obviously
24 along the way we're going to adjudicate claims and figure
25 out whether Grand Pacific has allowed claims.

1 THE COURT: As a realistic matter --

2 MR. PASTERNAK: Yeah.

3 THE COURT: -- is the ability to get that
4 financing largely premised on Grand Pacific not having an
5 allowed secured claim?

6 MR. PASTERNAK: No.

7 THE COURT: No.

8 MR. PASTERNAK: No, it's not.

9 THE COURT: So the debtor believes there's enough
10 value in the property to get a development loan even with
11 the secured debt that's already on it?

12 MR. PASTERNAK: Well of course there's a delta
13 between, you know, what is claimed owed and what we believe
14 could be owed, but there has already been discussions with a
15 few lenders about the total construction cost and then what
16 would be the resulting value of the property. And the delta
17 is even higher than the alleged total debt of \$17 million or
18 18 million. So there is significant equity if we develop
19 the property.

20 As we sit here today, depending on what secured
21 creditor is owed, there may or there may not be an equity in
22 the current condition of the property.

23 THE COURT: Right. Okay.

24 MR. PASTERNAK: It's a very valuable piece of -- a
25 very strategic property. I mean we've laid this out, Your

1 Honor, I don't want to rehash the 1007 unless Your Honor has
2 questions.

3 THE COURT: No, it's okay.

4 All right. Mr. Zipes, do you have any questions?

5 MR. ZIPES: No, Your Honor.

6 THE COURT: Okay. All right. So why don't we
7 turn then to the motion to dismiss/motion for leave from the
8 stay.

9 MR. PASTERNAK: Sure, Your Honor.

10 MR. SELBST: Good afternoon, Your Honor, Stephen
11 Selbst, Herrick, Feinstein for Grand Pacific.

12 Your Honor, you had said earlier that there was
13 some issue about papers getting to you?

14 THE COURT: Yeah, I didn't get them from either
15 side.

16 MR. SELBST: Oh, we have the FedEx and we know
17 they were delivered to you, Your Honor.

18 THE COURT: Well any way, didn't --

19 MR. SELBST: I apologize.

20 THE COURT: You know Ms. Lee is on vacation, so
21 all hell has broken loose.

22 (Laughter)

23 MR. PASTERNAK: We actually were told that and
24 delivered our papers. We were told to deliver them right to
25 Ms. Salvo (ph).

1 THE COURT: All right. Well --

2 MR. PASTERNAK: -- which we did, and she's
3 acknowledged that, but --

4 THE COURT: Okay. All right. Fine.

5 MR. PASTERNAK: -- sorry.

6 MR. SELBST: Well, I'm sorry if there was a mix up
7 because we --

8 MR. PASTERNAK: That's all right.

9 MR. SELBST: -- have a FedEx received from
10 yesterday.

11 THE COURT: That's all right.

12 MR. SELBST: Any way.

13 THE COURT: All right.

14 MR. SELBST: Your Honor, as Your Honor knows from
15 reading the papers the debtor -- Grand Pacific believes
16 these cases should be dismissed as bad faith filing. And as
17 we've said in the papers, we believe that this lines up
18 squarely with the CTC factors, which I know Your Honor is
19 very well familiar with.

20 It is undisputed that this is a two-party dispute
21 with a very long litigation history.

22 The debtors' Chapter 11 petition showed as its
23 creditors two prior law firms and a personal injury
24 claimant, and at the 341 meeting they said we're going to
25 allow the stay to be lifted to allow that personal injury

1 claim to access the insurance proceeds.

2 So really what we have here is beyond dispute, a
3 case between Grand Pacific and the debtors.

4 There's been no interest paid by the debtor on the
5 Grand Pacific loans since 2007. There are no real estate
6 taxes paid on this property since 2007. And as we allege in
7 our papers, Grand Pacific has reached into its pockets to
8 pay \$150,000 of real estate taxes over that period. As
9 Mr. --

10 THE COURT: Look, I'm going to cut you short. I
11 think CTC was a very limited fact case where the debtor was
12 not eligible in the first place, and I believe if a debtor
13 has a legitimate business prospect and a legitimate use for
14 using Chapter 11 then it has a right to file Chapter 11,
15 whether there's 1 creditor or 10,000. Congress doesn't say
16 you're only eligible to be in Chapter 11 if you have more
17 than one creditor. I'm just not -- I'd like to focus more
18 on what the use of this case is.

19 MR. SELBST: I'll be happy to go through it, Your
20 Honor.

21 THE COURT: Okay.

22 MR. SELBST: The reason that I started with Grand
23 Pacific and I'm going to move on is because we believe that
24 it does line up in terms of the totality of the factors.
25 But I want to talk about what the debtors have argued about

1 dismissal and why we think this is inappropriate.

2 First off, we don't believe -- the debtors
3 basically say they want to relitigate claims against Grand
4 Pacific.

5 THE COURT: They don't, they specifically say
6 they're not doing that. The only one they want to litigate
7 is the one that hasn't been ruled on yet, and I -- maybe I'm
8 reading between the lines. There was a trial scheduled on
9 that one I thought.

10 MR. SELBST: That's correct, Your Honor.

11 THE COURT: All right.

12 MR. SELBST: There was a trial in West Chester
13 state court as to one issue and one issue alone, which was
14 as to the Grand Pacific loans whether Grand Pacific's
15 exercise of its foreclosure remedy was in good faith.

16 But here's what's not in dispute, Your Honor.
17 There were two sets of loans that Grand Pacific had. It had
18 the original loans that it made, and during the course of
19 this it acquired the loans of the prior lender, Sterling.

20 In the New York collection action Grand Pacific
21 got a judgment on those Sterling loans in the amount of
22 \$9.4 million, and it got that judgment in May of 2011, and
23 with the post-petition interest that judgment now amounts to
24 approximately \$12.7 million. And we believe, Your Honor,
25 that that judgment is protected by the Rooker-Feldman

1 Doctrine.

2 THE COURT: But they're not -- you're not looking
3 to challenge that judgment except maybe the amount, right?

4 MR. PASTERNAK: Very specifically it is a claim or
5 a lien, we don't dispute that. We believe it is capable of
6 equitable subordination. And also in the Supreme Court
7 decision that granted summary judgment it specifically -- in
8 a weird way preserved the debtors' counterclaims and said
9 that could be subsumed into the trial on the foreclosure.

10 THE COURT: But since then your counterclaims,
11 except for number 5, have gone by the boards, right?

12 MR. PASTERNAK: Admittedly --

13 THE COURT: Right.

14 MR. PASTERNAK: -- we're not seeking to relitigate
15 any of that.

16 THE COURT: Okay. So --

17 MR. PASTERNAK: But counterclaim 5 is a big one.

18 THE COURT: Okay.

19 MR. SELBST: But, Your Honor, here's my point
20 about this. We believe that under Rooker-Feldman they can't
21 equitably subordinate that claim.

22 The Rooker-Feldman Doctrine, the purpose of that
23 is to prevent state court losers from being able to
24 recharacterize, set aside, or challenge valid state court
25 judgments irrespective of whatever the merits of their claim

1 on the Grand Pacific loan, and of course we think there are
2 none. They can't challenge, and including equitable
3 subordination we don't believe, that valid judgment on
4 Sterling. The time to challenge that came and went, and
5 this -- Your Honor, this is -- there's nothing new under the
6 sun, Ecclesiastes taught us that.

7 There'd been other debtors who've done that,
8 there'd been other debtors who said there's a state court
9 foreclosure judgment or a state court judgment and they've
10 sought equitable subordination. There's a case called In
11 Sunshine III Real Estate, which is in Massachusetts, and
12 there the debtors did the same thing they're doing here.

13 THE COURT: But if it's based on claim number 5?
14 If the equitable subordination is based on claim number 5?

15 MR. SELBST: They -- their chance --

16 THE COURT: Counterclaim number 5, excuse me.

17 MR. SELBST: That's a claim that they -- first off
18 a lot of the allegations that they've made have been
19 previously rejected. We think they have substantial claim
20 preclusion problems -- or issue preclusion problems.

21 THE COURT: Well, maybe, but that's different than
22 -- I mean the Court left open claim number 5, so
23 obviously --

24 MR. SELBST: Not in dispute, Your Honor, that
25 claim is open, but we don't think -- respectfully we don't

1 think that that claim allows them to go after the Sterling
2 loans, we think that's only valid as to the Grand Pacific
3 loans, and we think that the Sterling loan -- they said
4 themselves as to the -- the Court said as to the Sterling
5 loans defendants do not allege, let alone offer evidence
6 intending to demonstrate that Sterling, the original lender
7 under both notes, fraudulently induced them.

8 There is no basis to challenge the Sterling loans,
9 it's a valid judgment for 12.7, and we believe that under
10 Rooker-Feldman they can't equitably subordinate that loan.

11 THE COURT: But what -- I guess the context we
12 have here is a motion to dismiss on that basis, right?

13 MR. PASTERNAK: Yes.

14 THE COURT: Is that a summary proceeding? I'm
15 just -- it would seem to me that maybe you should make your
16 motion to dismiss the subordination claim as opposed to
17 dismiss the case, because you're basically asking me to
18 apply Rooker-Feldman in the context of -- I mean I haven't
19 reviewed their complaint, I don't know what claim number 5
20 is or the like.

21 MR. SELBST: Well actually --

22 THE COURT: I mean when I read your motion I said,
23 well, yeah, he's going to win on this because they're
24 looking to relitigate everything, but there's a significant
25 claim that's open and I really don't know how it relates to

1 -- I mean I think to apply Rooker-Feldman, to the extent
2 it's not just another way to say collateral estoppel or res
3 judicata.

4 MR. SELBST: Which it's not.

5 THE COURT: Well, I understand, but it's a pretty
6 detailed analysis, which I think maybe should be done in the
7 context of an adversary proceeding here, which is their
8 adversary proceeding.

9 MR. SELBST: Right. Well --

10 THE COURT: As opposed to just dismissing the
11 case.

12 MR. SELBST: They haven't -- of course they
13 haven't filed the adversary proceeding, but we believe --

14 THE COURT: Well they moved to -- they -- I'm
15 assuming what they're going to do since they removed the
16 state court litigation is amend their complaint to add
17 equitable subordination, at which point you'll move to
18 dismiss the complaint.

19 MR. PASTERNAK: That's correct. That's correct.

20 MR. SELBST: But as -- what I'm trying to suggest,
21 Your Honor, is this litigation was trial ready in the state
22 court. They filed a Chapter 11, and we believe that the
23 right answer is that you should allow us to -- if you want
24 us to file a motion to remand back to the state court.

25 THE COURT: I think that is the answer. I think

1 that is, because -- I mean I can't really lift the stay
2 since it's already been removed. I can give you an early
3 hearing on it, you know, that's fine. You can say that to
4 Ms. Lee when she gets back next week. But I think
5 technically I can't really lift the stay just for that
6 purpose, although that may be a legitimate purpose for a
7 remand.

8 MR. SELBST: Well, I think Your Honor can, but I
9 understand that we haven't filed that remand motion.

10 THE COURT: Well it's not -- yeah, I think so.

11 MR. SELBST: I'd like to make just a couple more
12 points though, Your Honor.

13 Even under the best of circumstances, because we
14 think there are other reasons why this case should be
15 dismissed, under the best of -- under the best set of facts
16 these cases are months, if not years away, and tens of
17 millions of dollars away from being developable.

18 One of the things that was remarkable to us in the
19 response papers that Mr. Pasternak filed was that they both
20 admitted that there was no current zoning on this property
21 and acknowledged that it was 9 to 15 months away and 3- to
22 \$500,000 in funds just to get to the zoning. Beyond the
23 zoning of course they need development funds and they're
24 going to need funds pay off the valid claims of Grand
25 Pacific.

1 There's no question --

2 THE COURT: Well they'll need something before
3 then too because it's single asset real estate, so they'll
4 need to start making the debt payments.

5 MR. SELBST: We're 45 days into that 90-day
6 period, Your Honor.

7 THE COURT: Right, I understand.

8 MR. SELBST: This isn't an invitation for months
9 more delay in a case that has now dragged on --

10 THE COURT: Well not really. If they don't make
11 the debt payments Congress dealt with that.

12 MR. PASTERNAK: Well we could file a plan within
13 90 days.

14 THE COURT: Well that has a reasonable prospect of
15 being confirmed.

16 MR. PASTERNAK: Understood.

17 MR. SELBST: And I'm trying to make the record on
18 that that there is no prospect that they're going to be able
19 to reasonably confirm a plan in 90 days.

20 THE COURT: Well --

21 MR. SELBST: Not a confirmable plan within 90
22 days, Your Honor.

23 THE COURT: They could file the plan, then I have
24 to decide whether it's confirmable within a reasonable time.
25 It doesn't -- the 90 days doesn't apply to the reasonable

1 time. But they will have to show a roadmap of how they're
2 going to fund the case, and by then I'll know more about
3 this litigation, because it did seem to me that they would
4 have to at least in some measure deal with this debt before
5 they could raise more debt.

6 MR. SELBST: And as I said, Your Honor, what they
7 said about the reorganizations is if we beat Grand Pacific,
8 if we get the zoning --

9 THE COURT: Look, could I --

10 MR. SELBST: -- if we get the financing.

11 THE COURT: Can I just -- it seems to me besides
12 the practical issues that you're going to there are two
13 legal issues that the parties should focus on right away,
14 which is they both relate to the claims that have not been
15 adjudicated so far.

16 The first is why shouldn't that claim actually be
17 -- since I'm being told it was trial ready -- be dealt with
18 by the state court that's been living with this litigation?
19 And maybe the answer is going to be, well, because we want
20 to add an equitable subordination claim, and then I'd like
21 to get a little more briefing on that and how that relates
22 to not only the law under Rooker-Feldman and/or collateral
23 estoppel, if that happened, if the facts -- I mean obviously
24 if the facts that equitable subordination is being based on
25 have already been determined, but also the facts generally

1 as to why it wouldn't fit into Rooker-Feldman.

2 And it seems to me that the next step in this case
3 is going to be the remand motion, and I think I'd like to
4 adjourn the motion here to that date so that we can hear it
5 all then with some more of a record.

6 MR. SELBST: Your Honor, I perfectly understand --

7 THE COURT: And you may join that with, you know,
8 a 362(d)(3) motion too.

9 MR. SELBST: I perfectly understand your concerns
10 about this, Your Honor, and I'm perfectly happy to
11 adjudicate it -- to adjourn this, but I'd ask you to give
12 them a short deadline for filing that complaint so we can
13 get this moving.

14 THE COURT: Well, yeah.

15 MR. SELBST: As you said they're staling and
16 they're staling.

17 THE COURT: I think we should have the hearing
18 about 45 days from now, no later than that.

19 MR. SELBST: Good.

20 THE COURT: I don't -- you know, those legal
21 issues need to be dealt with then, I hope you have more of a
22 roadmap of what it will cost to develop the property too by
23 then.

24 MR. SELBST: Thank you, Your Honor.

25 THE COURT: Okay.

1 MR. PASTERNAK: Of course, Your Honor.

2 THE COURT: All right.

3 MR. PASTERNAK: We understand.

4 THE COURT: Okay. Thank you.

5 (Pause)

6 THE COURT: And maybe you can reach some agreement
7 with Mr. Selbst so that he doesn't have to make another lift
8 stay motion. If I -- you know what I'm saying. I think all
9 the issues will be in front of me, including a lift stay
10 type of issue there, which he's already sort of made here,
11 but he --

12 MR. PASTERNAK: Let's get a briefing schedule --

13 THE COURT: All right.

14 MR. PASTERNAK: -- in a consolidated fashion, Your
15 Honor.

16 THE COURT: Okay.

17 MR. PASTERNAK: We shouldn't have any problem
18 doing that.

19 THE COURT: Okay. All right, thank you.

20 MS. CURLEY: Thank you.

21 MR. PASTERNAK: Thank you, Judge.

22 (Whereupon these proceedings were concluded at 12:20
23 PM)

24

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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Date: May 14, 2015

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